or, at least, that it was intended to be bilateral. If one side of a contract fails, but the other is, for some reason, binding, it is really a unilateral contract; yet equity will not enforce it. A recognized exception is the case where one side of a contract is in writing, the other unenforceable by the Statute of Frauds. In that case, perhaps in deference to the language of the statute, the side which has been put in writing will be enforced. (Hatton *v.* Gray, 2 Ch. Cas. 164.)

It is generally agreed that the mutuality has reference to the state of things when the contract was made; otherwise the rule involves an absurdity, for the remedy is almost never mutual at the time of filing the bill. The plaintiff alone can then have a remedy; he cannot maintain his bill unless the defendant is in default and he himself is not in default; the defendant in such a case could not maintain a bill. It is not a question, therefore, of the time when the remedy is sought, but of the time when the contract is made.

It is doubtful whether the rule as to mutuality is in force in Massachusetts. In the case of *Dresel* v. *Jordan* (104 Mass. 407), it was assumed that the rule was in force, and that, therefore, it would follow that a vendor of land could generally file a bill for the purchase-money. The correctness of this assumption, however, seems to be greatly shaken by the later case of *Jones* v. *Newhall* (115 Mass. 244), decided by the same judge. That was the case of a contract for the sale of shares in a land company. The purchase-money was payable absolutely; conveyance of the shares was conditional on payment of the purchase-money. The vendor filed a bill to recover the purchase-money, and the court dismissed the bill, on the ground that the remedy at law was adequate.

It seems impossible to reconcile this decision with the assumption in the case of *Dresel* v. *Jordan*. The vendee could have performance; therefore, if the rule as to mutuality of remedy is in force, the vendor should have it. The court does not notice the case of *Dresel* v. *Jordan*, and does not discuss the question of mutuality of remedy; it inquires only whether in the particular case the plaintiff has an adequate remedy at law. This is in fact an utter repudiation of the principle of mutuality of remedy. It is by no means to be regretted that this rule should be repudiated.

RECENT CASES.

ATTORNEY — IMPLIED AUTHORITY. — An attorney-at-law has implied authority to do all things which affect the remedy only, and not the cause of action; he may, therefore, dismiss a suit. *Davis* v. *Hall*, 3 S. W. Rep. (Mo.) 383.

CARRIER — LIMIT OF LIABILITY. — A common carrier cannot by contract avoid its liability for negligence; but where rates of transportation of freight are graduated according to the value of freight, and a limit of liability is fixed for each class of freight, a shipper who chooses to ship an animal worth $5,000 in a class in which the limit is fixed at $75, cannot for the loss of the animal recover more than $75. *Hill* v. *R. Co.*, 10 N. East. Rep. (Mass.) 836. To the same effect. *R'y Co.* v. *McCarthy*, Weekly Notes (Eng.) 1887, p. 34, reversing s. c. L. R. Ir. 18 Q. B. D. 1.

CONDITIONAL SALE. — When the question is whether corn was bought conditionally upon the result of "inspection" after delivery to vendee, it is for the jury to decide whether the selling of a portion after delivery but before inspec-

tion was possible, or the exercise of any other act of ownership, tended to decide whether the sale had been absolute or conditional. *Carpenter* v. *Bank*, 10 N.-East. Rep. (Ill.) 18.

CONSIDERATION. — A claim upon a judgment, made in good faith, is a good consideration for a promissory note, even though the judgment is in fact invalid. *Brown* v. *Ladd*, 10 N.-East. Rep. (Mass.) 839.

CONSTITUTIONAL LAW — AMENDING INDICTMENT. — *Ex parte Bain* (7 Supr. Ct. Rep. 781). The petitioner, Bain, was indicted for an offence against the laws of the United States. By order of court the indictment was slightly changed, by striking out what seemed to the court a superfluous clause. The trial proceeded and the prisoner was convicted. The prisoner now applies to this court for a writ of *habeas corpus*, on the ground that the change in the indictment renders the trial void. The petition was granted on the following grounds: The indictment can only be changed by the grand jury who framed it. If it is changed by order of the court or by the prosecuting attorney, it is no longer the indictment of the grand jury. The constitution of the United States provides that "no person shall be held to answer for a capital or infamous offence, unless on a presentment or indictment of a grand jury." This provision would be of little use if courts could change the indictment to suit the necessity of the case.

CONSTITUTIONAL LAW — "DUE PROCESS OF LAW."— A judgment *in personam* against a non-resident of a State is unconstitutional and invalid unless there has been a personal service of the writ within the State, or a voluntary appearance of the defendant. *Eliot* v. *McCormick*, 10 N.-East. Rep. (Mass.) 705.

CONSTITUTIONAL LAW — FORMER JEOPARDY. — An indictment for an offence against a city ordinance is no bar to an indictment under a State law, though the self-same act constitutes the offence in both cases. *Kemper* v. *Commonwealth*, 3 S.-W. Rep. (Ky.) 159. See 4 Cr. L. Mag. 79, for a valuable case on this point, and *id.* 496 for an article relating to it.

CONTRACT — PAROL EVIDENCE. — A receipt "in full of all demands" may, like any receipt, be contradicted by parol evidence that payment was not made as acknowledged; but the statement that the release was to be a discharge in full of all demands cannot be contradicted by parol evidence. *Cummings* v. *Baars*, 31 N.-W. Rep. (Minn.) 449.

CONTRACT FOR BENEFIT OF THIRD PARTY. — B agreed with C to furnish him such sums of money as might be necessary to pay C's current expenses; a creditor of C sued B upon this promise. It was held that though a third party for whose direct benefit a contract is made may sue upon it, and though such a person may be only one of a class, as a creditor, yet this principle gives no right to one who, as here, was only indirectly and incidentally to reap the benefit of the promise. *Burton* v. *Larkin*, 13 Pac. Rep. (Kas.) 398. See *Fisher* v. *Martin*, 25 N. Y. W'kly Dig. 539; and for a collection of cases on this right of the beneficiary, see 24 Cent. L. J. 112.

CONTRIBUTORY NEGLIGENCE — PASSENGER IN OPEN HORSE CAR. — If a passenger, at the invitation or with the consent of the conductor, stands up between the seats of an open horse-car, the seats all being occupied, and is thrown down and injured, in consequence of the rapid driving of the car around a curve, the passenger is not, as a matter of law, guilty of such contributory negligence as will prevent recovery. *Lapointe* v. *Middlesex R Co.*, 10 N.-East. Rep. (Mass.) 497.

CORPORATION — IMPLIED CONTRACT. — Where, in an action for a salary by a professor against the trustees of a college, the plaintiff shows that he has performed the services, expecting to be paid, and that he was advertised as a professor in the college catalogue, the corporation is liable for the value of the services, though the board passed no resolution authorizing his employment. *Tyler* v. *Trustees*, 13 Pac. Rep. (Or.) 329. "As against individuals the law implies a promise to pay in such cases, and the implication extends equally against corporations."

EASEMENT — NOTICE. — Where for a consideration A agreed with B, owner of adjoining property, in writing not recorded, that A should have the right to use the wall of B's building, and after A had erected a frame shop against B's wall, B's property passed by successive sales into C's hands, it was held that A could not replace the frame shop by a brick building, using the support of C's wall without compensation, the existence of the shop not being

sufficient notice to C of the contract. *Appeal of Heimbach*, 7 Atl. Rep. (Pa.) 737. But in *R. Co.* v. *Hay*, 10 N.-East. Rep. (Ill.) 29, it was held that where H contracted to sell C, a railroad company, a strip of land, and C occupied the land with track and a station, but no deed was ever given, and H then sold the land to the plaintiff, the title of the plaintiff was affected with the trust in favor of C, the use and occupation by C being sufficient notice.

ELEVATED RAILROAD — COMPENSATION TO ABUTTORS. — An elevated steam railroad in the streets of a city, of the kind usually constructed, is a diversion of the street from the use for which it was taken, and abutting owners may recover compensation for injury inflicted, including damage caused by emission of gas, smoke, dust, cinders, and other unwholesome substances. *Lohr* v. *Metrop. El. R. Co.* 10 N.-East. Rep. (N. Y.) 528, affirming the *Story Case*, 90 N. Y. 122.

EQUITY JURISDICTION — ACCOUNTS. — Even where a bill for an account will not properly lie, equity will take jurisdiction of complicated transactions; but the difficulty of adjusting the accounts is the basis of jurisdiction, and mutuality of accounts is an essential element only so far as it indicates complication and intricacy. *State* v. *Churchill*, 3 S.-W. Rep. (Ark.) 352.

ESCROW — REVOCATION. — A deed in escrow, to be delivered to the vendee on payment of purchase money, is not revocable, and the party holding it is bound to deliver on payment being offered. *Cannon* v. *Handley*, 13 Pac. Rep. (Cal.) 315. To the contrary effect, *Popp* v. *Swanke*, 31 N.-W. Rep. (Wis.) 916.

ESTOPPEL — TITLE. — If a party knowingly and without making known his own claim suffers another to purchase land and improve it at great expense under an erroneous opinion of title, the former will be estopped from asserting title thereafter against the latter. *State* v. *Graham*, 32 N.-W. Rep. (Neb.) 142.

EVIDENCE — RES GESTA. — Where the car started, while plaintiff was alighting, and threw her to the ground, statements made by the conductor while hastening to help her, were held not admissible as a part of the *res gesta*. *Williamson* v. *Cambridge R. Co.*, 10 N.-East. Rep. (Mass.) 790. See *Waldele* v. *R. Co.*, 95 N. Y. 274.

HANDWRITING AS A TEST OF IDENTITY. — Where it is sought to connect the identity of A and B, documents admitted or proved to have been written by B may be compared with documents proved to have been written by A, in order to establish that the two writers were one and the same person; and persons skilled in handwriting may give an opinion. *Bell* v. *Brewster*, 10 N.-East. Rep. (O.) In adverting to the instances in which this process was resorted to, the court omit to mention the Whitaker investigation, an account of which appeared in 2 Crim. Law Mag. 139. See 31 Sol. J. 405 (1887).

HOMICIDE — CHARACTER OF DECEASED. — Where, in an indictment for manslaughter, self-defence is an issue, testimony as to the violent character of the deceased is admissible. *State* v. *Downs*, 3 S.-W. Rep. (Mo.) 219. The view in this case has been adopted by almost all States, except Massachusetts (Wharton on Homicide, § 606 *et seq.*; 2 Cr. Law Mag. 78; 8 N. J. Law Journ. 215); though in the latter State the contrary rule has been weakened by the *Barnacle Case*, 134 Mass. 215.

ILLEGAL CONTRACT — DEALING IN "FUTURES." — If a contract to buy merchandise is speculative only, and no actual future delivery is intended, the contract is against public policy and void. *Beadles* v. *McElrath*, 3 S.-W. Rep. (Ky.) 152. See 3 Cr. L. Mag. 16.

INDORSEMENT — COMPLETE UPON DELIVERY. — Where an indorsement is written on a note by the payee in one State, and a sale and delivery is made in another State, the contract of indorsement is regarded as made in the State where the delivery occurred. *Briggs* v. *Latham*, 13 Pac. Rep. (Kas.) 393; see Ames' Bills and Notes, I. c. III. § 4, p. 273.

LARCENY — *Lucri Causa*. — In *Pence* v. *State*, 10 N. E. Rep. (Ind) 919, it was held not larceny to take and burn a buggy with an intent "to get even" with the owner. This decision is *contra* to the latest English and a large proportion of the American authorities (collected in Whart. Cr. L. 9th Ed., §§ 895–899). It is there said that one who takes with an intent to enrich himself is morally more guilty than one who takes only to destroy; but it is hard to see why the latter is not the more villainous, as well as the more expensive to society, of the two.

LIFE-TENANT — BETTERMENTS. — A life-tenant, 28 years of age, is bound to pay the entire assessment for a granite pavement laid on an asphalt foundation, for this improvement is not, as to him, to be regarded as permanent beyond his probable life-time. *Reyburn* v. *Wallace*, 3 S.-W. Rep. (Mo.) 482.

NEGLIGENCE — BLIND MAN. — It is not, as a matter of law, negligence in a blind man to walk in the public thoroughfares unattended. *Smith* v. *Wildes*, 10 N.-East. Rep. (Mass.) 446.

NEGLIGENCE — IDENTIFICATION OF PASSENGER WITH CARRIER. — A decision rendered in January last (*The Bernina*, 12 P. D. 58–99) has at last overruled *Thorogood* v. *Bryan*, 8 C. B. 115, which held the much-censured doctrine that the negligence of the carrier is regarded as the negligence of the passenger so far as it prevents recovery against a third party, for the result of contributory negligence. Several American cases were examined, particularly *Little* v. *Hackett*, 116 U. S. 366, Lord Esher, M. R., prefacing his citation by saying that it was "interesting and profitable, as it always is, to consider the American cases."

NOTICE — QUITCLAIM DEED. — A grantee receiving a quitclaim deed takes with notice that the title is dubious and is not a purchaser for value without notice. *Richardson* v. *Levi*, 3 S.-W. Rep. (Tex.) 445.

QUASI-CONTRACT — CONSTRUCTION OF STATUTE. — Where a statute gives a remedy against the Commonwealth for claims "founded on contract," the term includes only obligations arising from contracts either express or implied in fact, and not obligations *quasi ex contractu* imposed by law. *Milford* v. *Commonwealth*, 10 N.-East. Rep. (Mass.) 516. See 77 N. Y. 144. This class of cases shows clearly the true nature of so-called contracts implied in law.

SALE OF GOOD-WILL — IMPLIED AGREEMENT. — The sale of the good-will of a business does not, in general, impart an agreement by the vendor not to engage again in a similar business within the limits of competition. *Semble*, that personal solicitation of old customers by the vendor would not be permissible. *Hoxie* v. *Chaney*, 10 N.-East. Rep. (Mass.) 713. *Pearson* v. *Pearson*, 27 Ch. Div. 145, has lately reopened this question in England, overruling *Labouchere* v. *Dawson*, L. R. 13 Eq. 322, and deciding in accordance with the *dictum* above. A recent case in Connecticut, *Cottrell* v. *Babcock Company*, 35 Alb. L. J. 129, reviews the decisions, and reaches the conclusion contrary to that of *Pearson* v. *Pearson*.

SERVANT — LIABILITY OF MASTER FOR SERVANT'S ACTS. — Where the driver of a horse-car gives up the reins to a substitute, and, in leaving the car to go to his meals, negligently knocks a passenger off the platform, it is an act done in the course of his employment, and the company is liable. *Commonwealth* v. *Brockton Street R. Co.*, 10 N.-East. Rep. (Mass.) 506.

STATUTE OF FRAUDS — PERFORMANCE WITHIN A YEAR. — A contract to furnish material until notified to stop is not within the Statute of Frauds. *Walker* v. *R. Co.*, 1 S.-East. Rep. (S. C.) 366. To the same effect is *Bullock* v *Turnpike Co.*, 3 S.-W. Rep. (Ky.) 129.

SUBROGATION. — A judgment lien is extinguished at law upon payment of the judgment by a surety; yet in equity the lien continues in full force for the benefit of the surety. *Bank* v. *Fritz*, 32 N.-W. Rep. (Wis.) 123. See *Mann* v. *Bellis*, 4 Lanc. Law Rev. (Pa.) 162.

SUBROGATION — CREDITOR OF MORTGAGOR. — The sister of M, a mortgagor, paid off a portion of the mortgage, upon an agreement with her brother, but not with the mortgagee, that she should have an assignment of the mortgage when paid off. Before paying the balance she died. *Held*, that her estate was entitled to be subrogated to the mortgagee's rights to the extent of her payments. *Robertson* v. *Mowell*, 8 Atl. Rep. (Md.) 273. To the same effect, *Fievel* v. *Zuber*, 3 S.-W. Rep. (Tex.) 273. See *Flannary* v. *Utley*, 3 S.-W. Rep. (Ky.) 412.

TAX ON DRUMMERS — CONSTITUTIONAL LAW. — *Robbins* v. *Taxing Dist. of Shelby Co., Tenn.*, 7 Sup. Ct. Rep. 592, decides a very interesting point in constitutional law. A statute in Tennessee provided that all drummers selling goods by sample, in a certain district, should pay ten dollars a week, or twenty-five dollars a month, for such privilege. The question before the Supreme Court was the constitutionality of the above statute. Held by Bradley, J., in a very

clear opinion, that the above statute was an attempt by a State to regulate interstate commerce, and therefore unconstitutional, since Congress *alone* has the right to legislate on interstate commerce. The provision in question amounts to laying a tax on every order for goods obtained by a drummer. If States should be allowed to pass such laws it would cripple commerce.

Waite, C. J., Field and Gray, JJ., dissented. The dissenting view was that the act in question had nothing to do with interstate commerce, inasmuch as the tax was simply imposed on a business carried on primarily within the State, its interstate character being accidental and immaterial for the purposes of the tax.

A similar statute in Maryland was decided unconstitutional for the same reasons. *Corson* v. *Maryland*, 7 Sup. Ct. Rep. 655.

TELEGRAM — LIMIT OF LIABILITY. — A limitation of liability for telegraphic messages sent at night is invalid, so far as damage caused by the company's negligence is concerned, even though the company offers to insure all loss upon prepayment of a premium of one per cent. on the agreed amount of risk. *Marr* v. *W. U. Tel. Co.* 3 S.-W. Rep. (Tenn.) 497. See *Grinnell* v. *W. U. Tel. Co.* 113 Mass. 299.

TROVER — WHAT IS CONVERSION. — A and B purchase the growing crops of grass on two adjoining pieces of land, the line between not being marked. C, A's servant, while cutting A's grass, in ignorance of the boundary, cut part of the grass sold to B; C left the grass as it was cut. It was subsequently removed by other servants of A. Held, C was liable to B for a conversion. *Donahue* v. *Shippee*, 8 Atl. Rep. (R. I.) 541. Admitting that C's act was a dealing with property in assertion of title in another than the owner, it is, to say the least, difficult to see how C's act was anything more than a changing of realty into personalty, — a trespass to realty. If he had by the same act removed the grass, he would not have been guilty of larceny at common law.

REVIEWS.

COMMENTARIES ON THE LAW OF CONTRACTS. By Joel Prentiss Bishop, LL.D. Chicago: T. H. Flood & Co. 8vo. 780 p.

This book bears testimony on every page that the author gave to its preparation that painstaking investigation which is so characteristic of all his publications. The author has attempted to cover the entire subject of contracts in a volume of six hundred pages. We think the general feeling will be that the profession has lost in consequence of too great condensation.

Mr. Bishop has the great merit of not being led astray by fictions. Chapter VIII., dealing with "Contracts created by Law," affords a good illustration of this. And in pointing out, in § 908, that there is no propriety in speaking of an infant being liable, on his express contract, to pay for necessaries, when in fact he is required to pay, not the contract price, but the value of the necessaries, the author shows the same disregard for the fictions of writers that he does for those of the law.

The book will be found exceedingly useful in practice, and should be added to the library of every practising lawyer. W. A. K.

THE LAW OF PRIVATE CORPORATIONS. By Victor Morawetz. Second edition. Boston: Little, Brown, & Co. 8vo. v. and 1102 pages.

This deservedly successful book now appears in two volumes. From an artistic point of view, as its author would doubtless be the first to